Huntington Rubber Company, Division of New Idria, Inc. *and* United Cement, Lime and Gypsum Workers International Union, AFL-CIO-CLC. Case 14-CA-13924

March 17, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 3, 1981, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

1. In his Decision, the Administrative Law Judge found that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, by posting, on or about May 6, 1980,[3] a memorandum stating, *inter alia*, that if the Company refuses to bargain following the Union's assertion that it has obtained signed authorization cards from 51 percent of the employees the Union could: (1) call an immediate work stoppage for recognition; (2) request a Board election; or (3) request that the Board count the cards at a public hearing. The Administrative Law Judge concluded that the memorandum constituted a threat that Respondent would gain knowledge of the identities of the card signers and take appropriate retaliatory action. Respondent argues in its exceptions that the Administrative Law Judge's inference that Respondent would retaliate against the card signers is not supported by the evidence, and the memorandum contained no threats against the card signers. We find merit in Respondent's exception.

The record indicates that, on April 1, Respondent's vice president and general manager, Donald P. Reiter, conducted an employee meeting during which he displayed, through the use of several projected transparencies, Respondent's existing wage and benefits package, a sample union authorization card, and a statement outlining some hypothetical consequences of unionization.[4] In conjunction with his explanation of the meaning of the sample authorization card, Reiter stated that, if the Union obtained signed cards from over 50 percent of the employees, the Union would take the cards out in Reiter's office and lay them on his desk. The Administrative Law Judge found, and we specifically adopt the finding, that Respondent's statement with respect to the Union's presentation of authorization cards to Respondent conveyed a threat to the employees that the identities of those who signed union cards would be revealed to Respondent, followed by appropriate reprisals. In reliance on *The Lundy Packing Company*, 233 NLRB 319 (1976), the Administrative Law Judge reasoned that "there is no reason for informing employees that signed union cards will be made known publicly other than to let the employees know that the names of union adherents could be ascertained and appropriate reprisals taken."

The Administrative Law Judge concluded that Respondent's statements concerning union cards in the May 6 memorandum were violative of the Act for the same reasons that Reiter's April 1 statements with respect to union cards were violative. We believe that the two situations are distinguishable, however. Respondent's statement at the April 1 meeting that it would gain possession of the union cards conveyed the message to the employees that the identities and union sentiments of the card signers would be revealed to Respondent, and raised the possibility that Respondent would retaliate against the employees who signed union cards. Further, as noted above, Respondent's April 1 statement was made in the context of several other Employer unfair labor practices. In contrast, Respondent's May 6 memorandum, on its face, merely states that the signed union authorization cards may be counted by the National Labor Relations Board at a public hearing. The memorandum contains no statements indicating that Respondent would gain possession of the union cards or learn

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge recommended the issuance of a broad "in any other manner" order. We do not believe that Respondent's unfair labor practices are so egregious or widespread as to demonstrate a general disregard for the employees' fundamental statutory rights and, therefore, a need for such an order. Accordingly, we shall modify the recommended Order and notice to provide for a narrow "in any like or related manner" order. *Hickmott Foods, Inc.*, 247 NLRB 1357 (1979).

In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[3] All dates are in 1980 unless herein specifically stated otherwise.

[4] We specifically adopt the Administrative Law Judge's findings that during the April 1, 1980, meeting Respondent, through Reiter, unlawfully announced a cost-of-living wage increase and the commencement of an intensified safety program, and stated that the selection of a union by the employees would "cut off your [the employees'] line to management."

the identities of the card signers. As such, it cannot be said that Respondent's May 6 memorandum unlawfully threatened or coerced Respondent's employees. Accordingly, we shall dismiss the complaint allegation that Respondent interfered with, restrained, or coerced its employees on May 6 in violation of Section 8(a)(1) of the Act.

2. We further find, contrary to the Administrative Law Judge, that Respondent has not interfered with the employees' union activities in violation of Section 8(a)(3) of the Act by issuing warning letters to employees Della Epperson, Bernard Huss, and Barbara Spegal. The evidence fails to establish a sufficient causal connection between the employees' union activities and Respondent's disciplinary action. The record shows that Huss' and Spegal's union activities were limited to their signing union cards and attending union meetings at a local hotel. The evidence fails to show that Respondent had any knowledge of their union activities prior to issuing the warning letter. With respect to employee Epperson, the evidence reveals that Respondent had knowledge of her union activities prior to issuing the warning letter, but the record is devoid of evidence showing that the issuance of the warning letter was in any way connected with Epperson's union activities.

The evidence reveals that on June 9 and 11 employee Marcia Hampton complained to Respondent that employees Epperson, Huss, and Spegal had been harassing her about her conversations with Donald Reiter, Respondent's vice president and general manager. As outlined in the Administrative Law Judge's Decision, the employees accused Hampton of seeking preferential treatment from Reiter and of being a "brown noser." Respondent responded quickly to Hampton's complaints, investigated the incidents by speaking to Hampton and procuring a signed statement from her, and issued warning letters to the three employees.

The evidence, indicating that Respondent had no knowledge of Huss' and Spegal's union activity and an awareness of Epperson's union activity, when viewed in light of Respondent's legitimate reasons for issuing the warning letters, does not establish a violation of Section 8(a)(3) of the Act. We shall, therefore, dismiss the complaint allegations that Respondent violated the Act by issuing employees Epperson, Huss, and Spegal warning letters in order to discourage employees' union activities.

3. In his Decision, the Administrative Law Judge concluded that on June 13 Respondent violated Section 8(a)(3) by failing to grant Epperson the maximum allowable annual wage increase[5] because she had received a verbal warning from Quality Control Manager Robert K. Stephens in May[6] and, as discussed above, a written warning letter on June 11 from Assistant Quality Control Manager Robert L. Wade. In view of our previous finding that Respondent's June 11 warning letter with respect to Epperson was not violative of the Act, it is necessary to analyze the Administrative Law Judge's additional 8(a)(3) finding in light of our Decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). Under the *Wright Line* test of causation, the General Counsel is first required to establish a *prima facie* case in support of the inference that an employee's protected union activity was a motivating factor in the employer's decision to discipline the employee. If such a showing is made, the burden then shifts to the employer to demonstrate that the same employer action would have taken place even in the absence of the protected conduct.[7]

With respect to Respondent's failure to grant Epperson the maximum allowable annual wage increase, we find that the General Counsel has established the required *prima facie* case of unlawful motivation by showing that Respondent based its decision not to grant Epperson the full wage increase on the *unlawful* verbal warning directed against Epperson in May. It is necessary, therefore, to examine the record to determine whether there is evidence sufficient to show that Respondent would have failed to grant Epperson the maximum allowable annual wage increase even in the absence of Epperson's protected activity.

Epperson received the performance evaluation which is the subject of the 8(a)(3) allegation on June 13. The standard performance evaluation form indicates that an employee is evaluated according to his attendance record, quality of work, ability to be versatile in other areas, and attitude toward his job and coworkers. Epperson's 1980 performance evaluation shows that Supervisor Wade determined that Epperson's attendance record was outstanding, her quality of work and ability to be versatile was excellent, and her attitude was poor. On the basis of Epperson's receipt of two warnings from Respondent (one not unlawful and one unlawful), Wade characterized Epperson's attitude as poor, and recommended that she receive less than the maximum allowable annual wage increase.

[5] Pursuant to Respondent's annual performance evaluation of its employees, Respondent determined that Epperson was entitled to a wage increase of 8.4 percent instead of the maximum allowable amount of 10.7 percent.

[6] We specifically adopt the Administrative Law Judge's finding that Stephens' May 1980 verbal warning that Epperson should not discuss the Union in Respondent's restroom violated Sec. 8(a)(1) of the Act.

[7] See, generally, *Wright Line*, *supra*, 1086–91.

The record shows that in June 1979 Epperson received excellent ratings in all evaluation categories from her then supervisor, Stephens, with Stephens noting, *inter alia*, that Epperson "has a very conscientious and enthusiastic approach to a demanding job." Stephens concluded the performance evaluation by recommending that Epperson receive the maximum allowable wage increase. Further, Epperson's 1978 performance evaluation reveals that Epperson's then supervisor, Gary Ledford, recommended that Epperson receive the maximum allowable wage increase despite his determination that Epperson's attendance, quality of work, and ability to be versatile were good and that Epperson's attitude needed improvement.

Respondent argues that the implementation of a new evaluation scale during the 1980 performance evaluation period resulted in Epperson's wage increase being computed in a more systematic manner. Respondent contends that a comparison of past evaluations and correlative wage increases to the 1980 performance evaluations and wage increases is invalid due to the implementation of the new evaluation scale. Although the implementation of a new evaluation scale may have indicated that a "poor" attitude rating corresponded with a smaller wage increase, the ultimate cause for the wage determination is found in the underlying reasons for the poor attitude rating. We conclude that, when viewed as a whole, the evidence is insufficient to show that in the absence of Epperson's protected activity Respondent still would have failed to grant Epperson the maximum allowable wage increase. Respondent failed to produce evidence showing that similar reductions in wage increases were imposed against employees Huss and Spegal as a result of the June warning concerning the harassment of other employees. We conclude that Respondent has failed to meet its burden, and we, therefore, affirm the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(3) of the Act on June 13 by granting Epperson less than the maximum allowable wage increase.

AMENDED CONCLUSIONS OF LAW

We hereby affirm the Administrative Law Judge's Conclusions of Law, as modified below:

Substitute the following for Conclusion of Law 3:

"3. By issuance of a written warning to Della Epperson on June 12, 1980, relating to an oral warning given to Epperson on May 6, 1980, and by denying Della Epperson the maximum allowable wage increase, Respondent has discouraged membership in a labor organization by discriminating in regard to tenure of employment, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Huntington Rubber Company, Division of New Idria, Inc., Hannibal, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Issuing written warnings and verbal reprimands; announcing and granting wage increases; announcing and granting safety program changes, intensification, and benefits; denying wage increases; and otherwise discriminating against employees in regard to their hire or tenure of employment, or any term or condition of employment because of their union or protected concerted activities."

2. Delete paragraph 2(c) of the Administrative Law Judge's recommended Order and reletter the remaining paragraphs accordingly.

3. Substitute the following for paragraph 2(d):

"(d) Rescind and expunge from Epperson's personnel files the Stephens' written warning of June 12, 1980, relating to an oral warning given to Epperson on May 6, 1980, and notify Epperson in writing that this has been done and that evidence of this unlawful warning will not be used as a basis for future discipline against her."

4. Substitute the following for paragraph 2(h):

"(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act."

5. Substitute the attached notice for that of the Administrative Law Judge.[8]

[8] The introductory language contained in the attached notice is included to clarify the employees' rights under the National Labor Relations Act, as amended.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT announce or grant wage increases; issue written warnings and verbal reprimands; announce or grant safety program changes, intensification, or benefits; deny wage increases; or otherwise discriminate against employees in regard to their hire or tenure of employment, or any term or condition of employment because of their union or protected activities.

WE WILL NOT threaten employees with loss of their statutory right to present grievances or contact management because of their union activities or protected concerted activities.

WE WILL NOT threaten employees that the identity of those who sign union cards will become known and that there will be appropriate reprisals therefor.

WE WILL NOT coercively interrogate our employees as to their or other employees' union activities, sympathies, desires, or beliefs.

WE WILL NOT promise employees safer working conditions, participatory safety programs, wage increases, or other benefits to dissuade them from union activity or support for United Cement, Lime and Gypsum Workers International Union, AFL-CIO-CLC.

WE WILL NOT create the impression of surveillance of employees' union activities by statements that we have reports of their engaging in union activity.

WE WILL NOT interfere with employees' protected rights by prohibiting all discussion of unions on our property.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL make Della Epperson whole for any loss of pay or other benefits suffered by reason of our discrimination agaisnt her, with interest.

WE WILL rescind and expunge from Epperson's personnel files the Stephens' written warning of June 12, 1980, relating to an oral warning given to Epperson on May 6, 1980, and notify Epperson in writing that this has been done and that evidence of this unlawful warning will not be used as a basis for future discipline against her.

HUNTINGTON RUBBER COMPANY, DIVISION OF NEW IDRIA, INC.

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard pursuant to due notice on August 26 and 27, 1980, at Hannibal, Missouri.

The charge was filed on June 16, 1980; the complaint in this matter was issued on July 15, 1980. The issues concern whether Respondent has engaged in various acts of interrogation, threats, promises, and interference related to employees' rights to engage in union or concerted activity, and thereby has violated Section 8(a)(1) of the Act. The issues also concern whether Respondent has violated Section 8(a)(3) and (1) of the Act by issuance of reprimands to certain employees and by denial on June 13, 1980, of the maximum allowable wage increase to Della Epperson.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel and Respondent and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The facts herein are based on the pleadings and admissions therein.

Huntington Rubber Company, Division of New Idria, Inc., Respondent herein, is, and has been at all times material herein, a corporation organized under the laws of Nevada and duly authorized to do business under the laws of the State of Missouri.

At all times material herein, Respondent has maintained an office and place of business in the city of Hannibal, State of Missouri, herein called Respondent's Hannibal, Missouri, installation. Respondent maintains an-

other installation in the State of Oregon. Respondent is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of rubber products and related products. Respondent's installation located at Hannibal, Missouri, is the only facility involved in this proceeding.

During the year ending June 30, 1980, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations, purchased and caused to be transported and delivered at its Hannibal, Missouri, installation rubber and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to Respondent's installation in Hannibal, Missouri, directly from points located outside the State of Missouri.

As conceded by Respondent and based on the foregoing, it is concluded and found that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED[1]

United Cement, Lime and Gypsum Workers International Union, AFL–CIO–CLC, is, and has been at all times material herein, a labor organization within the neaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Preliminary Issues; Supervisory Status*[2]

At all times material herein, the following named persons occupied positions set opposite their respective names, and have been and are now supervisors of the Respondent within the meaning of Section 2(11) of the Act, and its agents: Donald P. Reiter—vice president/general manager; Robert K. Stephens—quality control manager; Robert L. Wade—assistant quality control manager; Gary Ledford—manufacturing manager; and Ronald Meyer—factory services manager.

B. *Background*

1. Respondent is engaged in the manufacture, sale, and distribution of rubber and related products. Respondent has facilities in Oregon and Missouri. Its Missouri facility, located in Hannibal, Missouri, is the only facility involved in this proceeding.

2. Respondent commenced its operations at its Missouri facility in June 1977. Later, around January 1979, Respondent moved its operations from its initial Missouri facility to another facility nearby.

3. Respondent's employee complement has fluctuated from June 1977, to August 1980. Its highest number of employees was 160. As of August 1980, its employee complement numbered a little over 140. None of the testimony or evidence relating to the size of Respondent's employee complement was specifically related in time so as to reveal the number of employees around March, April, May, and June 1980. Roughly, it would appear from the contentions of the parties and the evidence presented that the number of employees employed in March, April, May, or June 1980 was somewhere in the area of 120 to 160 employees. Approximately 50 percent of Respondent's employees are women.

4. Respondent's employees at Hannibal, Missouri, were not, as of August 1980 and at no time prior thereto, represented by a labor organization. An organizational effort by a union was undertaken in mid-1978, and an organizational effort by a different union commenced in the latter part of March 1980. At the times of both union organizational efforts, Respondent countered with a meeting wherein a Respondent official announced the granting of a wage increase and spoke of existing benefits and in opposition to unionization.[3]

5. Della Epperson was employed on June 16, 1977, the date Respondent commenced operations at its Hannibal, Missouri, facility. Epperson has continued to be employed from June 16, 1977, and was employed as of the date of hearing of this matter on August 26 and 27, 1980.

6. Respondent has evaluations of employees on their anniversary dates of employment and in accordance with such evaluations grants merit increases. From June 1977 to August 1980 Respondent has also granted two cost-of-living increases. Thus, in October 1978, Respondent granted employees a cost-of-living increase. Again around April 1, 1980, Respondent granted employees a 7-percent cost-of-living increase.

7. On or about June 9, 1978, Supervisor Gary Ledford evaluated Della Epperson's work performance, accorded her a "good" for attendance, quality of work, and versatility, and indicated that Epperson "needs improvement" in attitude toward job and coworkers. Ledford recommended the maximum increase available, a 12-percent increase, due to year's past performance. General Manager Reiter approved such recommended wage increase on June 19, 1978.

8. On or about June 11, 1979, Supervisor Kent Stephens evaluated Della Epperson's work performance, accorded her an "excellent" for attendance, quality of work, versatility, and attitude. Stephens also commented that "Della has demonstrated the ability to make sound decisions and do what needs to be done without help or supervision. She has a very conscientious and enthusiastic approach to a demanding job. I'm assured that everything Della works on will be followed through to completion and will be done correctly." Stephens recommended that Epperson receive a 12-percent wage increase due to year's past performance. Apparently by mistake, this recommendation of a 12-percent increase exceeded the determined maximum increase of 10.7 percent. A wage increase equivalent to a 10.7-percent increase was authorized and approved on or about June 27, 1979.

9. Around December 1979, and continuing at least to February 1980, there was a problem, in the nature of communications, existing among the inspectors on Re-

[1] The facts are based on the pleadings and admissions therein.

[2] The facts are based on the pleadings and admissions therein.

[3] General Manager Reiter testified to the effect that in 1978 he had told Della Epperson on June 16, 1978, of the oncoming pay raise, that the announcement of the pay raise was made in June, July, or September 1978, and that the pay raise was effective in October 1978.

spondent's first shift. The inspectors on the first shift were Della Epperson and Glenna Miller. Despite this, Stephens, in charge of quality and control, sought to secure a pay raise for the inspectors.

10. As indicated, the referred-to problem with inspectors was still in existence in February 1980, when Wade became the assistant quality control manager. At such time Stephens had a meeting with inspectors, introduced Wade as their immediate supervisor, told the inspectors that he wanted them to start off with a clean slate and that he wanted the inspectors to get along with one another. There is no evidence of any discussion with the inspectors in a group or individually as to such problems after February 1980.

11. On or about March 17, 1980, Respondent posted a notice advising employees of an opening for a "shuttle operator." On or about March 20, 1980, Della Epperson and Glenna Miller made application to Manufacturing Manager Ledford for the "shuttle operator" position. At such time Ledford indicated that he thought that Epperson was joking about the application for the shuttle operator's job. Despite this, it is clear that Ledford accepted Epperson's application for the shuttle operator's position.

Later, it appears that Epperson heard directly or indirectly that an employee named Sparks had indicated that Ledford would "bury" her and make the job hard for her if she secured the shuttle operator's position.

On the morning of March 21, 1980, around 11 a.m., Reiter[4] approached Epperson at her work station.[5] What occurred is revealed by the following credited excerpts from Reiter's and Epperson's testimony:

Excerpts from Reiter's testimony:

> Q. Did you talk with her about it?
> A. Yes, I did.
> Q. Where did you talk with her?
> A. At her work station.
> Q. Do you know when it was?
> A. Not specifically, but it had to be before March 21st or on March 21st.
> Q. Was anybody else present when you talked to her?
> A. Yes. I do remember Glenna Miller, now Glenna Atkins present. There may have been one other person, but I don't really recall.
> Q. What was said?
> A. Well, I approached Della at her work station and I thought we had a pretty good rapport at the time. I walked up to Della and I said, "Della, what's this I hear about you applying for the shuttle operator's job?" She said, "Yes, I have." I said, "Are you really sure you want to do that. You were happy in quality control I thought." She says, "It pays more money, but I'm not so sure I want the job." I said, "Why not?" She said, "Well, the rumor is running around the plant that if I take that job Gary is going to bury me."
>
> I said, "Della, I'm disappointed to hear you say that. I thought you trusted me and knew I wouldn't allow that to happen." I think she commented to the fact that anything is possible. I said, "Well, Della, I'm sorry to hear you say that, but whether you believe me or not I would not let something like that happen. As a matter of fact, you probably could try out on that machine as was done with other people and if it doesn't work out you'll find out about it real quickly, and you can go back into quality control and no harm done." It's always gratifying to me to see someone get a higher grade of pay in a higher classified job.
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> I then believe I said, "If you've got this problem, Della, I suggest you get it off your chest and sit down with Gary." I said, "You've got a good rapport. You can discuss matters with him. Tell him what you've heard." I said, "I'm sure he'll back up what I said that he'll give you a few days on the machine and if you don't like it fine." But I said to discuss it with him. "He's not going to do that and I'm surprised that you think he would." That was about the end of the conversation.

Excerpts from Epperson's testimony:

> Q. What did he tell you to do?
> A. He told me that if I was really serious about not wanting to go ahead and take the job if it was offered that I should let Gary know immediately.

Epperson then went to Quality Control Manager Stephens and told him that she was withdrawing her application for the shuttle operator's position.

Around 1 p.m. on March 21, 1980, Ledford called Epperson to his office. At such time, Ledford offered the shuttle operator's job to Epperson. Epperson told Ledford about the "rumor" or remarks made by Sparks indicating that Ledford would bury her or make it hard on her if she took the shuttle operator's job. Ledford told Epperson that he had not said anything like that, that he did not know where Bruce Sparks had got his information, that he should not be going around saying such things. Epperson indicated to Ledford that she would not take the job. Apparently Ledford, in an attempt to persuade Epperson to take the job, told Epperson that she was stubborn and pigheaded. In sum, Epperson declined the job and an employee named John Cormier received the job on March 21, 1980.

12. On March 21, 1980, as Epperson was leaving Ledford's office, she made some remarks in the presence of Wilson, Ledford's secretary. What Epperson stated is revealed by the following credited excerpts from Wilson's testimony:[6]

[4] Vice president and general manager

[5] The facts are based on a composite of the credited aspects of the testimony of Epperson and Reiter. The versions of testimony are substantially similar excepting Epperson's testimony indicated that Reiter indicated that if *she was serious about not* taking the job that she should let Ledford know. Considering all of the testimony and the logical consistency of all of the events, I am persuaded that Reiter indicated that Epperson should see Ledford either way, if she wanted the job or not.

[6] I credit Wilson in her testimony as to the point involved over Epperson's testimonial denial thereof. This resolution is based on a consideration of the total demeanor of Wilson and Epperson and the logical consistency of the facts. Thus, Epperson's actions on March 23 or 24 in predating her union card and her interest in the proceeding when considered in the context of Stephens' admitted questioning of Epperson about the events support the finding herein.

Q. Tell us what she said when, what happened when she came out, what did she say?

A. She just walked out of the office, shut the door behind her and she came through the office and she said, "He's more full of s—t than Reiter," and she had a cigarette and she put it out and she walked on out the door.

13. After the foregoing events, apparently after work, Epperson contacted the home of Glenn Webb. What occurred with respect to Epperson's contact with the Union and the commencement of union activity is revealed by the following credited excerpts from Epperson's testimony:

Q. When did you contact Mr. Webb?

A. March 21, 1980.

Q. What was said at that time?

A. Yes, I called, and Glenn was not at home. I talked to his wife, Karen, and she told me that she would relay my message and have Glenn return my call, which he did later on that evening. I told him that myself and several other employees were interested in forming a union at Huntington Rubber Company and would like to know what steps it would take to do this.

He told me to prepare a list of names of employees and that he would come and see me during the weekend, which he did.

Later, around March 23 or 24, 1980, Webb contacted Epperson at her home. What occurred is revealed by the following credited excerpts from Epperson's testimony:

Q. What occurred at that time?

A. He talked to me. I told him some of the problems that we had, the discontentment. He told me that we could be represented by Cement, Lime and Gypsum Workers, but that he would not start an organizing campaign until Mr. Lewis arrived. At this time I did sign a union authorization card.

Epperson signed the aforesaid union authorization card on March 23 or 24, 1980. Despite this, Epperson dated said card, and Webb dated the witnessing place on such card as March 21, 1980, the time Epperson originally sought out the Union.[7]

Later, on Wednesday or Thursday, March 26 or 27, 1980, Webb and Harold Lewis of the Union met Epperson at her home and reported that they had contacted several employees and were going to go ahead and try to organize the employees at Huntington Rubber Company. Commencing on or around March 24, 1980, Epperson spoke to employees about the Union and their willingness to see union representatives. Following this, the first union meeting was held on April 17, 1980. Among the employees who attended the April 17, 1980, union meeting were Bernard Huss and Barbara Spegal. Thereafter there were other union meetings and union talk.

[7] Although the misdating of the card was apparently intended to furnish aid and support for Epperson as of March 21, 1980, Epperson, at the hearing, testified frankly and forthrightly as to the correct date of signing.

C. Events of March 31, 1980

The facts are clear that Respondent was aware of union activity by its employees during the last part of March 1980. On March 31, 1980, Respondent posted a notice to employees as follows:

HUNTINGTON RUBBER COMPANY

INTEROFFICE MEMO

TO: All Employees—DATE: 3/31/80
FROM: Don Reiter
SUBJECT: Plant Meeting

You are invited to attend a plant meeting to be held from 3 to 4 o'clock on Tuesday, April 1, 1980. I do not expect the meeting to go beyond 4 o'clock.

For those of you who are not attending during working hours, you will be paid for the time at the overtime rate.

The intent of the meeting is to inform you as we have done in the past of the state of the economy, the health of our business, future company plans, etc. . . .

Please try to attend as I'm sure you will find it most informative and worthwhile.

As indicated later herein, the meeting referred to in the above notice was held on April 1, 1980. As had been indicated, Respondent's plant commenced operations in June 1977. Following such commencement and until April 1, 1980, Respondent's vice president and general manager, Reiter, had had several meetings with employees on individual shifts. Further, Reiter had had two meetings with all employees. Thus, in 1978, during the time of an effort by the Union to organize the plant, Reiter had held a meeting in June, July, or September 1978. At such 1978 meeting, Reiter had presented Respondent's views and arguments as to why employees did not need a union. At such 1978 meeting, Reiter had announced a wage increase for employees.[8] Reiter had also held a plantwide meeting in 1979 concerning a question of plant expansion.

It should be noted that prior to March 1980 Respondent had thought of certain improvements in its safety program. However, no significant action had been decided upon, and no positive steps had been taken as to such program.

Respondent became aware, during the last week of March 1980, that employees were engaging in union activity. At such time Vice President Reiter decided to grant its employees an across-the-board 7-percent cost-of-living increase, to institute some changes in a safety

[8] The parties attempted to litigate the question of the announcement and grant of the 1978 wage increase as background evidence having a bearing upon the determination of the allegations that the announcement and granting of the 1980 wage increase was unlawful. Suffice it to say, the evidence lacks probative clarity to establish that the granting of the 1978 wage increase was or was not affected by the question of union activity. The background evidence does, however, indicate that Respondent *utilized* the announcement of such wage increase in such a manner as to cause employees to believe that the wage increase in 1978 was granted to dissuade the employees from union activity.

program, to have a plantwide meeting, and to announce its grant of wage increase and changes in its safety program. In this regard, Respondent had made arrangements by mid-March 1980 for employing Ron Meyer as director of factory services.[9] Considering all of the facts existing at the time, Reiter decided that the time was ripe for a plantwide meeting to announce benefits, to present arguments concerning why employees should oppose unionization, and to introduce Meyer, whereupon, as indicated, Reiter announced that there would be a meeting on April 1, 1980.

D. *The April 1, 1980, Meeting*[10]

On April 1, 1980, Reiter made a speech to all employees. Reiter commenced such speech as is revealed by the following excerpts from his testimony.[11]

> Q. Referring to those exhibits, please, tell us what was said.
>
> A. I opened the meeting by an announcement to the people that this was another plant meeting similar to ones we have had in the past. The purpose of the meeting, one of the purposes was to bring them up to date and tell, or dispell any rumors about possible layoffs, but to bring them up to date as far as the national economy is concerned, the local economy and the state of affairs at Huntington Rubber Company, so that they knew where we were and where we were going.
>
> I took a few moments to discuss the high inflation rate and rising interest rates and the fact that International Harvester, our largest customer, had been on strike since October and was continuing on strike and it had seriously affected our production. I knew it was quite apparent to them there was a slowdown in our sales.
>
> I also mentioned to them that we expect them to go back to work soon and that we did not expect any serious effects over, the recession was here, and it was going to get deeper. We denied any serious effects at Huntington Rubber Company for the rest of the year. It's not a rosy picture, but that is what I told them.
>
> I referred to other plant slowdowns and layoffs and reminded them that, of past statements that I had made to them in previous meetings that when you come to work at Huntington Rubber Company we do everything we can to make you feel secure. This is not to say that we have never had a layoff, but we would do everything we possibly can and I cited cases when work got slow we ask you to do other things.
>
> Q. Did you introduce anybody at this meeting?
>
> A. Yes, I did. Ron Meyer had just been hired. I believe it was his second day on the job. He was hired March 31st and this was April 1st.
>
> Q. He was hired March 31st?
>
> A. Yes. That was his first day of work. He was actually hired, in principle we had come to a decision he would come to work in the middle of March, but this was his second day on the job and I introduced Ron as factory services manager. I also introduced Mike Johnson who was in the past comptroller of Huntington Rubber Company and now assistant comptroller at another level and was there at the meeting, and Jerry Morris, a new maintenance supervisor for the second shift, was also introduced.
>
> Q. Go ahead. You were talking about the economic situation.
>
> A. I described the economic situation to them and tried to assure the people that for the time being I didn't see anything to worry about at Huntington Rubber Company and not to expect any changes. I then announced to the people that one of the duties of Ron Meyer would be, among other things, safety and personnel, and basically he would wear many hats as my assistant. Ron said a few words inviting people to come to him with their problems and assured them that then he would be talking to them occasionally.
>
> I then briefly touched on the fact that we were going to intensify our safety program, not introduce a new one, but intensify our existing one. I told them that they would be seeing in the future a safety program initiated and perhaps after that an eyeglass program.
>
> I believe I also told them that the safety shoes, the majority of the cost, would be borne by the company, but the eyeglasses we had decided would probably be entirely borne by the company and it made no difference whether or not you used prescriptions or not.
>
> I then announced that with the rapid cost of living, the rapid rise in the cost of living, the inflation rate was approaching 20 per cent and the interest rate was in the neighborhood of 13 or 14 per cent, that we were going to, we had decided to give a 7 per cent wage jump across the board, and explained the reason for this is minimum wage is creeping up and that not because our people were being underpaid. We thought they were being fairly paid and above average for the area, but because our base entry rate was not being adjusted. The in-

[9] Considering the totality of facts, the timing of events, and the overall testimony of Reiter, I am not persuaded that his testimony is reliable to reveal that the wage increase and changes in safety program were determined prior to his knowledge of union activity by employees or upon reasons unrelated to the employees' union activity. Reiter's testimony was uncorroborated and appeared to be shifting as to the details thereto. Accordingly, the logical consistency of all the facts warrant the inferences that the events took place as set forth herein.

[10] The facts are based upon a composite of the credited aspects of the testimony of all witnesses and the logical consistency of facts. Virtually all of the witnesses testified to the effect that Reiter's speech (excepting as to introductory remarks, announcement of a wage increase, and announcement of improvements in a safety program) was in accord with transparencies projected for viewing by the employees. Epperson's testimony differed as to whether Reiter's statements were qualified in many respects. As to such differences in Epperson's testimony, I discredit her testimony.

[11] During his remarks about intensification of the safety program, Reiter told the employees that there would be a formation of committees at both management and lower levels, and that the Company was going to get people (employees) to participate on the committees.

dividuals were getting their increases on a steady basis, but that entry rate was remaining untouched. The last time we had done anything to affect the entry rate was back in 1978.

Q. In October 1978?

A. Yes. And that it was not time to do it again and I reminded the people that this was a wage adjustment that in no way would affect their annual performance, pay increase. With that I reminded them that we have been able to do a pretty good job, we thought, in the way, in the amount of their annual increase and that if they were coming up in the future with an annual performance review that they could probably expect on the average about 10 per cent additional increase.

I then put on the screen, I thought it was important that they understand for the first time, their pay increase guidelines. Prior to this it was only available to the supervisors in their evaluation.

After having projected for viewing by the employees a transparency showing the employer's pay guidelines, Reiter spoke concerning the same as is revealed by the following excerpts from his testimony:

Q. (By Mr. Kuelthau) Would you explain that.

A. Yes. I told them that in an effort to eliminate or to standardize in judgment of one supervisor to another supervisor and get a more fair evaluation in 1979 we initiated these guidelines, and that there were three major areas in which we would evaluate employees. They were quality of work, their attendance, and the third their attitude as to how they got along in their job and with their fellow co-workers. Each category was rated equal and that we had a point system that, quality of work, for example, the maximum, or the number of points you could get was one through five. Five would be outstanding and one would be poor.

The same was true of the attitude category and the same was true for attendance category. At the end of the evaluation these three categories, the points would be added up and then related to a table which would dictate what the maximum per cent of entries that this individual would receive.

Q. Did you explain to them that this was not related to the cost of living increase?

A. Yes, I did. I told them that this was how they were evaluated annually at the performance review.

After having discussed the 7-percent cost-of-living wage increase and the pay guidelines, Reiter proceeded to discuss the question of benefits, unionization, and Respondent's policy. In presenting such discussion, Reiter essentially used transparencies which were projected for viewing by employees. These, in major part, were the same transparencies shown employees in 1978 when the Union was trying to organize Respondent's employees. Reiter did not read a speech but spoke consistently with the meaning of communication set forth by the transparencies.

The first page illuminated by Reiter was a transparency bearing a picture of a diesel semi-tractor-trailer with the following words: "Huntington air intake hoses are dependable! They are made with thick, rigid walls and strong back ribbing to withstand the stress of high, underhood temperatures during long hauls."

The second transparency shown employees was as follows:

YOUR PACKAGE

WAGES
. . . . EQUAL OR ABOVE AVERAGE . . . .
ANNUAL INCREASE————————10 %
. . . . PERIODICAL WAGE ADJUSTMENTS
. . . . SHIFT DIFFERENTIAL————————$.10 & .15/hr.

At this point Reiter compared the 7-percent cost-of-living increase that he had previously announced with the last known negotiated increases at area plants, such as Atlantic Building, Hannibal Cement Plant, and American Cyanamid located at Palmyra, Missouri, where these negotiated increases were 8 percent, 6.5 percent, and 8 percent, respectively.[12]

The third transparency shown employees was as follows:

WORKING CONDITIONS
. . . . NO TIME CLOCKS
. . . . TWO PAID 15 MINUTE BREAKS
. . . . VERY CLEAN PLANT
. . . . EXCELLENT REST ROOMS AND LUNCH ROOM
. . . . AIR CONDITIONED PLANT

The fourth transparency shown employees was as follows:

VACATION & HOLIDAYS
. . . . 2 WEEKS AFTER 1 YEAR
. . . . 9 PAID HOLIDAYS

NEW YEAR'S DAY
MEMORIAL DAY
GOOD FRIDAY
INDEPENDENCE DAY
LABOR DAY
THANKSGIVING DAY
FRIDAY AFTER THANKSGIVING
CHRISTMAS EVE DAY
CHRISTMAS DAY

The fifth transparency shown employees was as follows:

MEDICAL PLAN
. . . . LIFE INSURANCE
. . . . DENTAL
. . . . MAJOR MEDICAL
. . . . LOSS OF TIME PAYMENT
. . . . ROUTINE HEALTH CARE

[12] Although Reiter did not identify these plants as unionized plants, such plants were unionized, and it is proper to conclude that employees would be aware of such status.

. . . . PENSION
. . . . NON EMPLOYEE CONTRIBUTORY

The sixth transparency shown employees was as follows:

RECOGNITION OF GOOD WORK
. . . . AMOUNT OF ANNUAL INCREASE
. . . . BEST PEOPLE—BEST JOBS
. . . . PROMOTIONS

The seventh transparency shown employees was as follows:

CONTINUATION OF WORK
. . . . MOVE EMPLOYEES AROUND WHEN THEIR DEPARTMENT IS SLACK
. . . . TRY TO MAKE WORK INTERESTING

The eighth transparency shown employees was as follows:

LITTLE THINGS!
. . . . CHRISTMAS PARTY
. . . . THANKSGIVING TURKEY
. . . . CHRISTMAS TURKEY AND FRUITCAKE
. . . . PAY ADVANCES
. . . . WORK OUT PERSONAL PROBLEMS
. . . . DIRECT LINE TO TOP MANAGEMENT

Reiter spoke to the employees concerning the referred-to benefits as is revealed by the following credited excerpts from his testimony:

> Exhibit 8H, the little things. I said these are little things but when you put them together they're expensive things and they are truly benefits; I listed the Christmas party, the Thanksgiving turkey, the Christmas turkey, fruitcakes, the fact that we give pay advances to people in a time of need. I reminded them that we are not in the banking business, but there have been a number of people who have had a need for pay advances and we don't like to do this, but we try to help out where we can.
>
> I also, I believe, reminded them that this is something, like anything else, if it's taken advantage of we would remove it, but we were giving pay advances.
>
> I told them I tried to work out personal problems. My door was always open. I can't work miracles, but I would be willing to discuss problems with anyone who wanted to discuss them with me. Then I said one thing that is very important is that you have a direct line with top management. We have an open door policy and I don't want to destroy that. That's all I said about that on this particular exhibit.

The ninth transparency shown employees revealed two copies of a union authorization card, such as the following:

THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO
AUTHORIZATION

Name———— Phone No.————
Address———— City———
Name of Company——— Location———
Department———— Shift Hrs.———

I hereby designate and authorize the Oil, Chemical and Atomic Workers International Union, AFL-CIO, as my collective bargaining representative in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. I also hereby authorize said union to request recognition from my employer as my bargaining agent for said purposes.

Date——— Signature————

Reiter read the authorization card and spoke concerning the same as is revealed in major effect by the following credited excerpts from his testimony:

> Then I said with Exhibit 8I which I flashed on the screen which is an authorization card that I believed was used by the International Union for Oil, Chemical and Atomic Workers and I said at a time like this when you are thinking about the union it is important that you understand what an authorization card is. I invited them to take a minute and read it. After a minute or so that they read it, I read it to the people.
>
> Q. You read the card?
>
> A. I read the card to the people. I said, let me tell you how the union will use these cards. With 30 per cent of the work force signing these cards the union can petition for an election. If they get greater than 50 per cent they can use these cards to come to me and to make, demand recognition. I told them to think carefully before they signed the cards because you are signing your right away if you sign this card. You are allowing the union represent, the union to represent you with management.
>
> Q. You're referring to specific cards?
>
> A. This is the card I had on the screen. This is the card that I was referring to. I said this is a typical card. It may or may not be the one they have seen, but I said this is one that we know they had all seen before.
>
> Q. Did you know whether any cards had been circulated in the plant?
>
> A. No, I did not.
>
> Q. Did you know what union was—
>
> A. (Interrupting) No, I did not.
>
> Q. Go ahead.
>
> A. I said to the people that this is a very important card and I wanted them to be aware of the fact that, what this card meant. I said, do not be pressured into signing this card. If you really want to sign it, it's your right. As I've told you before if

you want a union this is the way to get it. If you don't want a union don't sign the card, but it's your right and it's up to you.

I said often times you are pressured in the parking lot or pressured in your living room and you just sign it. I said to think about it before you sign it. . . .

Reiter also told the employees that if the Union had over 50 percent of the employees to sign cards that the Union could make a demand upon it for bargaining. Reiter told the employees that, if such a demand were made, the Union would take the cards out in his office and lay them on his desk.

The 10th transparency shown employees was as follows:

WHAT CAN A UNION GUARANTEE?
. . . . DUES—$100-$150/YR.
. . . . INITIATION FEE—$2-$150
. . . . POSSIBILITY OF STRIKE
. . . . EQUAL PAY REGARDLESS OF JOB PERFORMANCE
. . . . NO WORK OUTSIDE YOUR JOB DESCRIPTION
. . . . OLDEST EMPLOYEE GETS BEST JOB REGARDLESS OF YOUR PERFORMANCE
. . . . POSSIBILITY OF FINES
. . . . CUT OFF YOUR LINE TO MANAGEMENT
. . . . EVERYTHING IS NEGOTIATED

The 11th transparency shown employees was as follows:

. . . . NO UNION CAN GUARANTEE OUR PACKAGE
EVERYTHING IS NEGOTIATED!!!

As has been indicated, Reiter made remarks consistent with the transparencies at the time of the showing of the same. Following the show of and discussion of the 11th transparency, Reiter read a statement of the company policy concerning unions as is revealed by the following excerpt from the exhibit containing such policy:

Company Policy Regarding Unions:

While the company recognizes that labor unions may have been necessary in the past and may be necessary elsewhere to assure employees the full benefits of their work, we do not believe that unions are necessary here. Therefore, it is our policy that the company will develop and maintain personnel policies and programs and it is the duty and responsibility of each manager and supervisor to administer them, so that the human dignity of each employee is preserved and all employees are assured job security, equal opportunity for advancement, wages and supplementary benefits and working conditions that will encourage them all to resist joining a union.

E. *Contentions; Conclusions*

The General Counsel alleged in effect and Respondent denied that Respondent by Vice President Reiter, on April 1, 1980, at a meeting with all employees, granted a wage increase, promised an employee participatory safety programs and safer working conditions, told employees that union organizational activities would guarantee strikes and layoffs, threatened employees with reduction of working hours or layoffs, created the impression of surveillance, threatened employees with changed working conditions, loss of merit increases, and loss of promotions for outstanding performance in order to discourage membership in the Union and because employees were engaged in organizational efforts. As indicated, the allegations were many. Further, the allegations as set forth or the evidence as litigated revealed related issues of whether the announcement of the wage increase was in a manner as to interfere with employee exercise of Section 7 rights and whether there were promises of new benefits concerning the safety program.

The facts clearly reveal that Respondent announced the 7-percent cost-of-living wage increase in such a manner as to interfere with employee rights under Section 7 of the Act. Thus, the announcement of such wage increase following shortly after the commencement of union activity and in the context of an antiunion speech or presentation revealed at least an implied message that the wage increase was given to dissuade employees from engaging in union activity. Such conduct alone is violative of Section 8(a)(1) of the Act. Further, evidence of such conduct establishes a *prima facie* case that in fact the Respondent granted such wage increase to dissuade the employees from engaging in union activity. In this case, the testimony of Reiter to the effect that the wage increase was decided upon prior to the event of union activity and without regard to union activity was not persuasive because of demeanor considerations as well as timing of events. Thus, such *prima facie* case has not been overcome. Accordingly, it is concluded and found that the Respondent's grant of a wage increase on April 1, 1980, to be effective on April 7, 1980, constituted conduct violative of Section 8(a)(1) of the Act as alleged.

It is clear also that Reiter announced on April 1, 1980, that an intensified safety program was to commence, that there would be new safety requirements regarding the wearing of safety equipment, new procedures as to the safety program involving employee participation, and new benefits accorded by new or added percentage contribution as to cost by Respondent concerning safety glasses and shoes. As of the time of the announcement concerning the safety program and benefits, Respondent had not completely determined the program or benefits, and Reiter so indicated. The presentation of such announcement of a proposed changed safety program, employee participation therein, and new benefits, in the context of an antiunion presentation, reveals that Respondent promised such changes in its safety program and benefits to dissuade employees from supporting the Union. Such conduct is violative of Section 8(a)(1) of the Act. It is so concluded and found.

As noted, Reiter indicated to employees that the selection of a union would "cut off your line to management." Such statement is not correct as a matter of law and under the circumstances constitutes conduct violative of Section 8(a)(1) of the Act. Thus, Section 9(a) of the Act sets forth that,

> . . . any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

Reiter's statements under such circumstances constituted a threat that employees would be denied a statutory right of presentation of grievances as provided in Section 9(a) of the Act. Such statement by Reiter constituted conduct violative of Section 8(a)(1) of the Act.

As to the allegations and contentions concerning the fact that, if the Union made a demand for recognition, union cards would be seen by Respondent, the litigation was broader than the complaint allegations, and the facts reveal conduct violative of Section 8(a)(1) of the Act. The facts do not establish, in my opinion, that Respondent created an impression of surveillance. However, as indicated, the litigation of these facts was broader. The facts establish that Respondent communicated to employees that if the Union persuaded over 50 percent of the employees to sign cards the Union would make a demand for bargaining and under such circumstances the Union would show the cards to Respondent.

The Board's pronouncement in *The Lundy Parking Company*, 223 NLRB 139 (1976), is controlling in this case. The Board in *The Lundy Parking Company* cited with approval *N.L.R.B.* v. *Finesilver Manufacturing Co.*, 400 F.2d 644, 646 (5th Cir. 1968). In such case, the Fifth Circuit Court of Appeals set forth in effect that the truthfulness of a statement did not insulate a statement from being a threat or being violative of the Act if circumstances revealed the intent of a threat. *The Lundy Parking Company* case reveals a pronouncement in effect that there is no reason for informing employees that signed union cards will be made known publicly other than to let the employees know that the names of union adherents could be ascertained and appropriate reprisals taken.

Accordingly, it is concluded and found that Respondent threatened employees that the identity of those who signed union cards would become known to it and that appropriate reprisals would be taken. Such conduct is violative of Section 8(a)(1) of the Act.

As to some allegations that Respondent by Reiter, on April 1, 1980, at the meeting with employees, made threats or statements violative of Section 8(a)(1) of the Act, the facts do not support such allegations. Reiter's presentation of arguments against the need for unionization was in major effect skillfully executed. Thus, the facts do not establish that Reiter told employees that union organizational activities would guarantee strikes and layoffs. Rather, Reiter skillfully set forth the benefits the employees had, and that the Union could as their bargaining agent take positions which would possibly eliminate the way benefits were then accorded. Thus, Reiter indicated that the Union could guarantee the possibility of strikes. At first blush the use of the word "guarantee" in such context appears ambiguous. In actuality, it appears that the word is virtually meaningless in such context and is not ambiguous. In effect, Respondent's presentation injects the possibility of strikes and does not reveal the same to be inevitable. As to the question of whether Reiter threatened employees with reduction of work and/or layoffs, with changed working conditions, with loss of annual merit increases, and with loss of promotions for outstanding performances, Reiter's presentation merely reveals that the Union as bargaining representative might bargain for changes in existing conditions. Respondent's statements in such regard come within the purview of protection of Section 8(c) of the Act.

F. *April 1-17, 1980, Interrogation*

Epperson credibly testified to the effect that she had two conversations with Supervisor Kent Stephens in early April 1980 before April 17, 1980. The first conversation took part in early April and concerned the remarks made by Epperson on March 21, 1980, about Ledford and Reiter. The second conversation took place at a later time but before April 17. What occurred in the conversation between Stephens and Epperson is revealed by the following credited excerpts from Epperson's testimony.[13]

> Q. Who was present?
>
> A. Just Kent and myself.
>
> Q. What was said?
>
> A. After asking him whatever I needed to ask him about, the part of problem that I was in there for, Kent mentioned the union activity, and he asked me what my feelings were about the union. I told him that I didn't want the union to come in.
>
> Q. Told him what?
>
> A. I told him that I did not want the union to come in.

Considering the foregoing, I conclude and find that the facts reveal that Respondent, by Stephens, in early April 1980, interrogated Epperson about her union desire. There is no evidence to reveal a legitimate basis for Respondent's inquiry. Nor is there evidence that Stephens gave Epperson assurances that there would be no reprisals if she answered the inquiry. Under such circumstances, Stephens' interrogation of Epperson was coercive and violative of Section 8(a)(1) of the Act. It is so concluded and found.

---

[13] I discredit Stephens' testimony which is at variance with Epperson's. Stephens' testimony as to the timing of events and his memorandum given the Respondent persuade that he is an unreliable witness on this issue.

G. *Events of May 6, 1980*

On or about May 6, 1980, Respondent posted the following memorandum:

> TO: ALL EMPLOYEES
>
> The United Cement, Lime and Gypsum Workers Union is actively trying to get you to sign authorization cards. Why? As a means of answering this question we have drawn up a series of questions and answers:
>
> WHAT IS A UNION AUTHORIZATION CARD?
>
> A signed statement from an employee stating that he wants the union to be his collective bargaining agent.
>
> DOES SIGNING A CARD OBLIGATE YOU?
>
> Yes. It is a *legal* statement that you want the union to represent you.
>
> WHAT DOES THE UNION DO WITH THE CARDS IT COLLECTS?
>
> There are two possibilities:
>
> a. If the union gets cards signed by 30% of our people, they can petition the National Labor Relations Board for an election, or
>
> b. If the union gets cards signed by 51% of our people, it may send us a letter asking us to bargain.
>
> IF THE UNION ASSERTS THAT IT HAS 51% OF THE CARDS AND ASKS THE COMPANY TO BARGAIN, MUST THE COMPANY DO SO?
>
> No.
>
> WHAT CAN THE UNION DO IF THE COMPANY REFUSES TO BARGAIN IN THESE CIRCUMSTANCES?
>
> The union has three possibilities:
>
> 1. It can call an immediate work stoppage for recognition.
> 2. It can request an NLRB election, or
> 3. It can request the NLRB to count the cards at a public hearing.
>
> The main thing you should realize is that signing a card is a very meaningful thing. It legally assigns a person's right or representation to the union. Nobody should sign a card unless he is willing to accept all the consequences and obligations of such representation.
>
> Very truly yours,
> /s/ Don Reiter
> Donald P. Reiter
> Vice President and
> General Manager

The General Counsel contends and Respondent denies that Respondent by the use of this memorandum violated Section 8(a)(1) of the Act by in effect threatening that Respondent would gain knowledge of those who signed such cards. Considering the memorandum, I am persuaded and conclude and find that the memorandum constitutes a threat that Respondent would gain knowledge of those who signed union cards and take appropriate reprisals. Such conclusions and findings are based on the same reasons as previously set forth relating to Reiter's statements made on April 1, 1980, concerning cards. Accordingly, I conclude and find, as alleged, that Respondent has violated Section 8(a)(1) of the Act.

H. *May 1980 Creation of Impression of Surveillance*[14]

In May 1980, Supervisor Stephens spoke to Epperson again as is revealed by the following credited excerpts from her testimony:

> Q. Directing your attention to the month of May 1980, did you have occasion to speak to him?
>
> A. Yes. Kent asked me to come to his office, and he said that it had been reported again through the grapevine that I had been in the restroom twice that morning and overheard discussing the union.
>
> I told him that I had been in the restroom about 11:30, that Peggy Morris, another employee, was in the restroom with me at the time, that she was talking about a man that she knew that had been dumped from his job. She did not, nor did I, mention Huntington Rubber Company or any specific union, and I didn't even know for sure what she was talking about. My only comment was, "Oh, yeah?" I also told Kent that there was another employee in the restroom at that time.
>
> Q. Do you know who that other employee was?
>
> A. Yes, I do. Anna Cunningham.
>
> Q. (by Mr. Kuelthau): Beg your pardon?
>
> A. (Anna Cunningham continuing): I told Kent that I had not been discussing the union, and—
>
> Q. (Mr. Kuelthau interrupting): I'm sorry. I did not hear what you said.
>
> A. I told Kent that I had not been discussing the union. His reply was, "Well, make sure you don't do it."

The General Counsel alleges and Respondent denies that Respondent, by Stephens, during the month of May 1980, created the impression of surveillance of employees' union and/or protected concerted activities, by telling employees that he knew of their conversations. Considering the credited facts, I am persuaded that the facts establish that Respondent, by Stephens, as alleged, created the impression of surveillance of employees' union and protected concerted activities. Such conduct is violative of Section 8(a)(1) of the Act. It is so concluded and found.

[14] The facts are based on the credited aspects of the testimony of Epperson. For similar reasons set forth with the credibility resolution as to the issue of interrogation of Epperson previously set forth, I discredit Stephens' testimony at variance with the facts found. Considering Stephens' memorandum of June 12, 1980, wherein he dated a warning to Epperson as having been given on May 6, 1980, it appears that the warning to Epperson set forth herein occurred around May 6, 1980.

The General Counsel also alleges and Respondent denies that Respondent, by Stephens, during the month of May 1980, imposed an overly broad no-solicitation rule against one of its employees, which in effect prohibited all discussion of the Union on Respondent's property.

Considering the credited facts, I am persuaded that the facts reveal that Respondent, as alleged, imposed a rule which prohibited all discussion of the Union in Respondent's restroom. Such rule clearly interfered with, restrained, and coerced employees in the exercise of Section 7 rights and is violative of Section 8(a)(1) of the Act.[15]

The General Counsel alleges and Respondent denies that Respondent, by Stephens, during the month of May 1980, issued a verbal reprimand to Epperson.

The basic facts concerning this issue are the facts relating to Stephens' conversation with Epperson in May 1980, about reports that she had been overheard talking about the Union in the restroom, her denial that she had been talking about the Union in the restroom, and Stephens' admonition that she should not do it (talk about the Union in the restroom). At first blush, the facts would indicate that Stephens gave warnings about future conduct and not a reprimand about past conduct. The statements, however, cannot be viewed in a vacuum. The overall facts, in total context, as later set forth, reveal that in June 1980, Respondent construed that it had, by Stephens, given Epperson a verbal warning in May 1980 because she was a disruptive influence. The facts in totality persuade that the verbal warning referred to was in fact the statements made by Stephens in effect that Epperson should not talk in the restroom about the Union. Although the overall facts reveal that Epperson, until mid-June 1980, did not construe that she had received a warning or reprimand, Wade told Epperson on June 13, 1980, that she had received a verbal warning in May 1980 from Stephens.

Considering all the facts in total context, I am persuaded that the facts reveal that Respondent by the conduct of Stephens in May 1980, in the context of Respondent's later actions of memorandum and oral statements to Epperson, issued a verbal reprimand to Epperson in May 1980 in order to dissuade her from engaging in protected concerted activity. Such conduct by Respondent is violative of Section 8(a)(1) of the Act.

1. *Events of June 9, 1980*

On June 9, 1980, employee Marcia Hampton had an occasion to speak to Vice President Reiter. After her conversation with Reiter, fellow employee Huss spoke to her concerning her conversation with Reiter. Later, the same day, fellow employees Spegal and Epperson spoke to her about her "relationship" with Reiter. What occurred with respect to Hampton's conversation with Reiter, with Huss, and with Epperson and Spegal is revealed by the following credited aspects of Hampton's testimony.[16]

Q. Marcia, there's been some talk in the last two days about the encounter that you had with Buddy Huss. Do you remember when it was, the first one?

A. The first one was on June 9.

It was after lunch, between the lunch break and the afternoon break.

Q. And was anybody else present?

A. Larry Swank.

Q. And where did this occur?

A. It occurred at my work station.

He stopped by—I had been talking to Don Reiter before—

Q. (Interrupting) You had?

A. Yes. And Buddy and Larry came from their work station over to mine, and Buddy said, "I saw you sucking ass. I see you were talking to Don Reiter. What did he want?" I told him that it was not really any of his business, and they walked on.

Q. Now, thereafter, did you have any contact with anybody else about talking to Reiter?

A. Yes. When I went in on the afternoon break, I was sitting at a table with Barbara Spegal, Della Epperson, Peggy Morris and Sandy Slaughter. Barbara said to Della, "I think I'll stop Don Reiter the next time he walks by and see how far I can stick my nose up his ass."

Then she turned to me and said, "Don't you think I'd make a good brown noser, Marcia? You should know."

Q. Did you have another talk with them or did they mention it again to you?

A. Yes.

Q. Before we get to that, did Della say anything?

A. Yes. She said that, was joking around and said that she was probably going to get fired but that she didn't care. She wouldn't be the first one in line for unemployment and welfare benefits.

Later on June 11, 1980, Hampton had another conversation with Reiter. Again Huss spoke to Hampton as is revealed by the following credited excerpts from Hampton's testimony:

Q. What happened that day?

A. I was talking to Reiter again, and when he left, Buddy Huss again came over to my work station, and he said, "You're sure spending a lot of time talking to Don Reiter," and he asked me several times what he wanted.

Q. What did you tell him?

A. I told him nothing, and he went on.

Q. And did Barbara mention it to you?

A. Yes. At noon, Barbara said that she saw me talking to Don Reiter again and she told me that she thought I was getting to be a brown noser.

Later, on June 11, 1980, Hampton reported to Reiter that some of the employees had been harassing her about her conversations with him. What occurred is revealed

[15] Such rule was at least imposed on Epperson.

[16] I found Hampton to appear to be a completely truthful witness. Although the conflicts in testimony are not many or great, I find Hampton's testimony to be more reliable than that of the other witnesses and credit her testimony where in conflict with the testimony of other witnesses.

by the following credited excerpts from Reiter's testimony:

> Later, and I don't recall whether it was the same day or another day, Marcia stopped me walking past her work station again and she said, "Don, I've got a problem. I'm being harassed by other employees for talking to you." I said, "You've got to be kidding me." She said, "No. They're harassing me and making it difficult for me. Is there something I can do about this?" I said, "Well, tell me about it."
>
> She told me that after I had left from talking to her the first time that, the first event was Buddie Huss and Larry Swank, a co-worker of Mr. Huss, leaving their work station and walking over to Marcia's work station and stop Marcia and interrogated Marcia as to why she was talking to me. I believe Marcia reported that Buddie said, "I saw you sucking ass with Reiter. What did he want?" Marcia said she told him, "It's none of your business." I don't recall whether he asked the question again, but he then walked away. Marcia took that not too kindly.
>
> The next incident was later that day, I believe, in the lunch room when Marcia went into the lunch room and sat at the table with Sandy Slaughter. I believe Marcia said Peggy Morris was there and Della Epperson and Barbara Spegal. Barbara Spegal was really talking to Della and said, "How far do you think I can get if I stop Don Reiter the next time he walks by me and I stick my nose up his ass, what do you think?" She turned to Marcia and said, "What do you think, Marcia, you should know," and with that Della offered her support and chimed in and said—
>
> MR. BEGIAN: (Interrupting) I object to that characterization.
>
> JUDGE STONE: Well, I sustain the part about offer the support. That's a comment. I'll strike that part. Go ahead. Testify what she said.
>
> A. (Continuing) Della said, "Oh, I don't care if they fire me. I'll be the first in the welfare line and in the unemployment line." This was reported to me by Marcia verbally and Marcia asked me if there is something we can do and I said, "Yes, there is something. We don't have to put up with harassment of fellow employees. This is a pleasant place to work and we will keep it that way." I said, "Would you be willing to sign a complaint to that effect," and she said yes. She asked me if her identity had to be revealed and I said no that she didn't have to reveal it that we would keep it in confidence.
>
> I said, "At some point in time it may be revealed. Is that a problem with you?," and she said no, "No, it's not. I have to work with the people, I just want the harassment stopped." I said, "O.K., let me see what I can do about it."

On the same date, Reiter spoke to Meyer about the incident as is revealed by the following credited excerpts from Reiter's testimony.

> I then called Ron Meyer into my office and I said, "Ron, we have got a problem out on the floor. Marcia has complained that Della Epperson, Buddie Huss and Barbara Spegal are harassing her," and I said I wanted it stopped.
>
> I said it's degrading morale and if we permit this action it will tear the plant apart. I said, "I want you to investigate. Talk to Marcia. Talk to Bob Wade, Gary Ledford and decide on the course of action, but if you find that Marcia will stand behind her complaint, issue warning letters to all three of them," and that was the end of that discussion.

On the same date, Meyer followed Reiter's instructions and spoke to Hampton. At such time, Meyer took a statement from Hampton in longhand.[17] Later, a memorandum dated June 13, 1980, from Meyer to Reiter, included apparently the written version of Hampton's statements as originally set forth in longhand. At some point of time, on June 13, 1980, or within several weeks, Hampton signed the memorandum indicating apparently her agreement to the statement.

On June 11, 1980, following Meyer's taking of a longhand statement from Hampton about the incidents of June 9 and 11, 1980, Ledford spoke to Huss, around 3 p.m. At such time, Ledford gave Huss a written warning as follows:

INTEROFFICE MEMO

FROM: Gary Ledford Date: 6-11-80
Hannibal, Missouri TO: Bernard Huss
63401
SUBJECT: WARNING—Non-compliance with Company Regulations

You have failed to comply with the company regulation:

Not informing your supervisor prior to absence.
Non-compliance with company safety regulations.
Disregard for equipment.
Excessive lateness.
Other

Because of the above you run the risk of being dismissed unless an improvement is observed.

This is a written warning notice. It has been reported that you have harassed another employee on the job. This causes a disruptive influence in the plant, this condition will not be allowed to continue and any further action will result in termination.

SIGNATURE:——— DATE:——

What was said between Ledford and Huss is revealed by the following credited excerpts from Ledford's testimony.

> Q. What did you tell him had occurred?
>
> A. I told him that another employee had complained and had signed a written complaint that he

[17] It is not established as to whether Hampton signed or initialed the statement when written in longhand.

had stopped at this person's work station and made comments about what they had been doing, or who they had been talking to, something along that line.

Q. Did Bernard Huss ask you who made this complaint?

A. Yes, he did.

Q. And what did you tell him when he asked that?

A. I told him that the complaint was given in confidence and that I would not reveal the name of the person who had made the complaint.

Q. Did he also ask what he had allegedly done?

A. Yes, and I told him that I could not tell him the exact words, because that would betray the confidence of the person who had made the complaint.

Q. Let me just show you what's been previously identified as General Counsel Exhibit 7-B. It consists of two pages. Is that the warning you gave to Bernard Huss on June 11?

A. Yes, it is. This copy doesn't have the signature on it. I believe the signature is supposed to be up here. It was up here at the top.

Q. But Huss did sign it.

A. Yes, he did.

It appears that the warning was on a form with the portion set forth as beginning with: "This is a written warning notice . . ." setting forth the warning and basis therefor.

On June 11, 1980, around 3 p.m. Ledford spoke to Spegal. At such time, Ledford gave Spegal a warning essentially similar to the one given Huss excepting such warning used the word "may" instead of "will" as regards "any further action may result in your termination." Spegal argued and asked questions about the basis for the "warning" as is revealed by the following credited excerpts from her testimony:

Q. Was anyone else present besides yourself and Ledford?

A. No.

Q. What happened then?

A. I walked in and he shut the door and I asked him why he called me in the office. He said that somebody had complained that I had been harassing her. I asked him what he meant. He said they put out a written complaint against me. I asked him who it was and he wouldn't tell me. I asked him what I said and he wouldn't tell me. I told him I didn't understand that. Then he read the written warning to me and he wanted me to sign it and I told him that I didn't agree with it and I felt like I hadn't harassed anybody. He told me to go ahead and sign it, that that didn't mean whether I agreed or didn't agree. It just meant that I had seen that letter.

Then I said that I'd never heard of anybody getting wrote up for harassment before. He said yes that people have been fired right on the spot for that. I said, "Well, I never heard of such a thing." He said yes it was true.

Q. Did anything else occur at that time?

A. I asked him again why, I mean who I harassed and what I said and he told me that I couldn't know, that he could not say and I said, "Well, I still don't understand what it was all about," and he told me that I knew. He said, "You know what it's all about, Barb." Then I left.

Q. Did you talk to Mr. Ledford any more that day?

A. Not on that day.

Q. Did you have occasion to speak to him on the following day, the 12th?

A. Yes, I did. I went into his office before 7 o'clock and told him that I would like to have a written copy of my letter, my harassment letter.

Q. What, if anything, did he say?

A. He gave it to me and then we went into his office. I asked him again who I said it to and what I said and he told me again that he couldn't tell me. I asked him how come I wasn't given a verbal warning like everybody else does and he told me it depended on the seriousness of it. I said, "How come me and the person I'm supposed to have harassed weren't brought into your office to discuss it?" To discuss it like everybody else usually does, you know.

Q. Anything else said at that time?

A. I asked him again who I said it to and what is it. I asked him, I said, "If it was that bad what did I say?" He said, "No, Barb, there wasn't no profanity in it. It's just what you said."

* * * * *

Q. (By Mr. Begian) After directing your attention to June 13th did you have occasion to speak to Mr. Ledford on that day?

A. Yes, I did.

Q. Where did you speak to him?

A. He came back to my work station.

Q. Was anybody else present?

A. Tony Blackford.

Q. What was said?

A. I asked him for a written letter stating who I was supposed to have harassed and what I said and he told me he couldn't give it to me.

On June 11, 1980, around 3:15 p.m., Supervisor Wade presented to Epperson a written warning which was signed at such time by Epperson. Such warning was as follows:

To: Della Epperson
From: Bob Wade
Re: Attitude

June 11, 1980

In April you were given a verbal warning by Mr. Stevens that you were a disruptive influence to the plant work force. This was reported to him by other employees.

This is a written warning that this condition has not been corrected and a continuation of this action

will result in the termination of your employment. This action was again precipitated by complaints of other employees.

Your signature is required to this warning notice, to acknowledge receipt of this warning. It does not acknowledge that you agree or disagree.

/s/ Della Epperson
June 11, 1980
3:15 p.m.

At such time, Epperson denied that Stephens had given her a verbal warning. Epperson questioned Wade about the warnings and as to who had made the charges.

Wade's credited testimony reveals that he had heard "rumors" that Epperson had been engaged in union activity prior to June 11, 1980. Questioning of Respondent's witnesses otherwise did not establish knowledge of union activity by Spegal or Huss prior to June 11, 1980.

The General Counsel alleges and contends that Respondent on June 11, 1980, issued warning letters to Epperson, Spegal, and Huss, and has failed and refused since such date to rescind such warning letters. These allegations are not really disputed. The General Counsel alleges and Respondent denies that the "warnings" were issued in order to discourage employees from engaging in union activities and other concerted activities for their mutual aid and protection.

Considering all of the facts in total context, I find merit in the General Counsel's contentions. Thus, the overall facts reveal a basis for Respondent's belief that Epperson, Huss, and Spegal were engaging in conduct relating to union organizing activity in their remarks and actions directed toward Hampton. First, Respondent had a reasonable basis to believe that Epperson might be prone to support a union as a result of her actions on or about March 21, 1980, relating to a job opportunity. Any question that Respondent might have had would appear to have been eliminated when it had reports that Epperson was talking about the Union in the bathroom. Further, Wade, as of June 11, 1980, had heard "rumors" of Epperson's union activity. Considering this, in connection with the remarks actually made by Epperson on June 9 and 11, 1980, I am persuaded that the June 11, 1980, warning letter given to Epperson was in order to discourage employees' engaging in union or protected concerted activities. The totality of events indicates that the remarks of the employees (Huss and Spegal) constituted criticism of the Employer or those who sided with the Employer. Such remarks occurring during the time of a union campaign indicate in effect an ongoing campaign. Epperson's remarks on June 9 and 11, 1980, however, were of such a nature that one could hardly believe that a warning letter or reprimand would be issued. The facts reveal that the Respondent made no attempt to ascertain Epperson's, Huss', or Spegal's version of what had occurred. The facts also reveal that Respondent would not specifically reveal to Epperson, Huss, and Spegal what each had actually done, or who the complainant had been. The remarks actually made by Epperson, Huss, and Spegal were of such a nature that ordinarily one would not perceive a real basis for Respondent's not being specific as to the complaint or complaints. The remarks made by Spegal and Huss to Hampton are of the type that warning letters might have been warranted. Considering, however, the type of remarks made by Epperson and the issuance of a warning letter, the vagueness of Respondent in the warning letters and in remarks to Epperson, Huss, and Spegal as to the basis of the warning letters and as to the complainants, the overall facts establish that the warnings were issued to interfere with the employees' engaging in union or protected concerted activities. Such conduct is violative of Section 8(a)(3) and (1) of the Act. It is so concluded and found.

J. *Events of June 12, 1980*

On or about June 11 or 12, 1980, Vice President Reiter and Supervisor Stephens discussed the fact that Wade would be making the annual review of Epperson's work performance. Reiter told Stephens in effect that he believed that it was necessary that there be documentation of an "oral warning" given by Stephens to Epperson.

Thereafter, apparently on June 12, 1980, Stephens prepared a memorandum for the file as follows:

TO: File—DATE 6-12-80
FROM: Kent Stephens
SUBJECT: Oral Warning

On 5-6-80, I cautioned Della Epperson that I had received a report from another employee to the effect that she was a disruptive influence. I warned her that if these reports were accurate, and if she failed to discontinue the offensive behavior, she would be subject to severe action.

K. *The Events of June 13, 1980*

On or about June 13, 1980, Supervisor Wade made an annual performance evaluation of employee Epperson. On June 13, 1980, Wade met with Epperson, discussed the evaluation, and had Epperson to set forth her comments as to the evaluation. The completed evaluation with comments was as follows:

ANNUAL PERFORMANCE EVALUATION

NAME OF EMPLOYEE BEING EVALUATED: Epperson, Della
STARTING DATE OF EMPLOYEE: June 16, 1977
ATTENDANCE RECORD OF EMFLOYEE FOR PAST YEAR: Outstanding
QUALITY OF WORK SHOWN BY EMPLOYEE FOR PAST YEAR: Excellent
ABILITY OF EMPLOYEE TO BE VERSATILE IN OTHER AREAS: Excellent
ATTITUDE EMPLOYEE HAS TOWARDS HIS JOB AND HIS CO-WORKER: Poor

COMMENTS OF EMPLOYEE: I disagree with the attitude—it seems to me it would show up in my attendance & other items upon which evaluation is made.

/s/ Della Epperson

Employee's signature
COMMENTS OF SUPERVISOR:

[X] RECOMMEND 8.4 % INCREASE DUE TO YEARS PAST PERFORMANCE
[ ] RECOMMEND INCREASE BE SUSPENDED UNTIL EMPLOYEE IMPROVES WORK HABITS
[ ] RECOMMEND EMPLOYEE STAYS AT PRESENT RATE DUE TO RECENT RECLASSIFICATION AND INCREASE IN WAGE. (Suggest Employee be evaluated 1 (one) year from reclassification date.)

/s/ Bob Wade,
Supervisors signature

DATE 6-13-80

What occurred otherwise on June 13, 1980, in the conversation between Wade and Epperson is as revealed by the following credited excerpts from Epperson's testimony.[18]

> Q. What occurred at this time on June 13 with Mr. Wade?
>
> A. Bob told me that he was going to give me my annual performance evaluation. He told me that he had given me an 8.4 per cent, which was not the maximum, and the reason he was knocking down my raise was because I had received a verbal warning from Kent Stephens and a written warning from himself. He said that he had given me excellent in all other categories, in attendance, in ability, and in the quality of my work.
>
> I told Bob that I had not been given a verbal warning by Kent, and he told me that he wasn't going to argue the point but that I had been. I asked him what about, and he said that I was given a verbal warning in May by Mr. Stephens concerning when I was overheard in the bathroom discussing the union. To my knowledge, Kent Stephens did not give me a verbal warning. If he did, he did not state that's what it was.

On June 13, 1980, Respondent gave Epperson a wage increase of 8.4 percent instead of the maximum allowable wage increase of 10.7 percent.

The General Counsel contends and Respondent denies that Respondent violated Section 8(a)(3) and (1) of the Act by denying Della Epperson on June 13, 1980, the maximum wage increase allowable.

Considering all the facts, I am persuaded that the facts preponderate for a finding that Respondent denied the granting of the maximum allowable wage increase of 10.7-percent to Della Epperson on June 13, 1980, because of its belief that she was engaged in union or protected concerted activities. Thus, the facts reveal that Respondent for the past few years had granted Epperson the maximum allowable wage increase even when her "attitude" had not been deemed the best. Epperson's credited testimony reveals that she was told by Wade that the reason she was not receiving the maximum allowable wage increase was that she had received a verbal warning from Stephens and from Wade. The facts reveal that the only warning that Epperson had actually received from Stephens was a warning by Stephens in May 1980 relating to Epperson's talking about the Union in the restroom.[19] As found, Wade's warning on June 11, 1980, was to dissuade Epperson from engaging in union and protected concerted activity. Thus, the sum of the facts reveal that Respondent did not grant Epperson a 10.7-percent wage increase on June 13, 1980, because she had engaged in union or protected concerted activities. Such conduct is clearly violative of Section 8(a)(3) and (1) of the Act. It is so concluded and found.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent issued reprimands to Della Epperson, Bernard Huss, and Barbara Spegal in violation of Section 8(a)(3) and (1) of the Act, it will be recommended that Respondent be required to rescind and to expunge such reprimands from its files.

It having been found that Respondent denied Della Epperson the maximum wage increase allowable, in violation of Section 8(a)(3) and (1) of the Act, the recommended Order will provide that Respondent make her whole for loss of earnings or other benefits within the meaning and in accord with the Board's decisions in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),[20] except as

[18] The testimony of Epperson and Wade is largely consistent. As to conflicts therein, I found Epperson to appear to be a more frank, forthright, and truthful witness. Considering this and the logical consistency of facts, I credit Epperson's testimony over that of Wade's where in conflict.

[19] I note that Wade's June 11, 1980, warning to Epperson referred to an April 1980 warning by Stephens. Stephens' June 12, 1980, memorandum referred to a May 6, 1980, warning. Considering all the facts, I am persuaded that Stephens did not consider his talking to Epperson in April 1980 about the events of March 21, 1980, to be a warning. Rather, Stephens considered that he had given Epperson a warning in May 1980 about talking in the bathroom. Respondent's attempt to disguise its reasons concerning Epperson's evaluation appears to have by error resulted in correctly referring to the actual warning by Stephens. Further, even if the asserted warnings had been properly based, it would appear that the "attitude" problem reflected was minimal in nature. Considering the grant of maximum wage increases in the past when "attitude" had been judged as not being "excellent," it would not appear that the 1980 attitude evaluation would have warranted less than a maximum wage increase.

[20] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from in any other manner interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Huntington Rubber Company, Division of New Idria, Inc., Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Cement, Lime and Gypsum Workers International Union, AFL-CIO-CLC, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By issuance of reprimands to several employees and by denying Della Epperson the maximum allowable wage increase, Respondent has discouraged membership in a labor organization by discriminating in regard to tenure of employment, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. By the foregoing and by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[21]

The Respondent, Huntington Rubber Company, Division of New Idria, Inc., Hannibal, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Issuing warning letters, verbal reprimands, announcing and granting wage increases, announcing and granting safety program changes, intensification and benefits, denying wage increases and by otherwise discriminating against employees in regard to hire or tenure of employment, or any term or condition of employment because of their union or protected concerted activities.

(b) Threatening employees with loss of statutory right to present grievances or contact management because of their union activities or protected concerted activities.

(c) Threatening employees that the identity of those who sign union cards will become known and that there will be appropriate reprisals therefor.

(d) Coercively interrogating employees as to their or other employees' union activities, sympathies, desires, or beliefs.

(e) Promising employees safer working conditions, participatory safety programs, wage increases, or other benefits to dissuade them from union activity or support for the Union.

(f) Creating the impression of surveillance of employees' union activities by statements that Respondent has had reports of their engaging in union activity.

(g) Interfering with employees' protected rights by prohibiting all discussion of unions on Respondent's property.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Make Della Epperson whole for any loss of pay or other benefits suffered by reason of the discrimination against her in the manner described above in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind and expunge the warning letters issued to Della Epperson, Bernard Huss, and Barbara Spegal on June 11, 1980.

(d) Rescind and expunge the Stephens' memorandum of June 12, 1980, relating to an oral warning given to Epperson on May 6, 1980.

(e) Post at Respondent's plant at Hannibal, Missouri, copies of the attached notice marked "Appendix."[22] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations of unlawful conduct not specifically found to be violative herein be dismissed.

[21] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[22] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."